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ABSTRACT

ESEA Title I was the first federal aid program to authorize services for private school children. In view of the complexities of administering Title I, this handbook provides (1) a compilation of passages from the law and the regulations, and guidelines pertaining to the participation of private school children; (2) a brief explanation of the law's provisions and the regulations; (3) an identification of the major problems encountered in administering the provisions and some possible solutions to these problems; and (4) some suggested procedures in project development to create an opportunity for the meaningful participation of private school children in Title I activities. (Author)

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Title I ESEA

Participation of Private School Children

A Handbook for State and
Local School Officials

1971

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Elliot L. Richardson, Secretary

Office of Education
S. P. Marland, Jr., Commissioner

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DISCRIMINATION PROHIBITED--Title VI of the Civil Rights Act of 1964 states: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Therefore, Title I of the Elementary and Secondary Education Act of 1965, like every program or activity receiving financial assistance from the Department of Health, Education, and Welfare, must be operated in compliance with this law.

PREFACE

Title I of the Elementary and Secondary Education Act (ESEA) was the first Federal aid to education program to authorize services for private school children. As well as setting a precedent, however, the inclusion of these services added significantly to the complexities of administering Title I.

The provision of services for children enrolled in private schools called for a whole new set of relationships, both administrative and programmatic, to be established and maintained. At the outset, no one really knew a "best way" to implement the law as it affected private school children.

Experience has been a critical factor in bringing a greater precision to the regulations and guidelines. In view of this, and recognition of a continuing need for clarification, there have been frequent requests for a handbook to provide: (1) A compilation under one cover of the passages from the law, the regulations, and the guidelines which pertain to the participation of private school children; (2) a brief explanation of the provisions of the law and the regulations; (3) identification of the major problems encountered in administering the provisions and possible solutions to these problems; and (4) suggested procedures in project development to create opportunity for meaningful participation of private school children in Title I activities.

As used in this handbook, the term private school means a school, other than a public school, which is operated on a nonprofit basis, satisfies State compulsory education requirements, and complies with Title VI of the Civil Rights Act of 1964. This would include schools operated by religious groups, independent schools, and community or "free" schools.

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I. THE PROVISIONS OF TITLE I AFFECTING THE PARTICIPATION OF PRIVATE SCHOOL CHILDREN

The requirements of Title I concerning the participation of private school children are found in the law itself and the regulations. The pertinent passages of the law and regulations and more detailed administrative guidelines are reprinted in chapter IV.

The Law

In brief and rather simple language, Public Law 89-10 sets forth the provision affecting private school children in Section 105(a) and Section 105(a)(2) of Title I ESEA. Basically the law requires that the local educational agency (LEA) must provide special educational services for educationally deprived children enrolled in private schools. The provision of these services must be consistent with the number of educationally deprived children in the private schools. Title I regulations emphasize this requirement. The law cites several examples of ways these services may be rendered, "such as dual enrollment, educational radio and television, and mobile educational services and equipment." Nowhere is a particular method prescribed or mandated.

The law specifies that instructional services and related activities must be provided for eligible private school children before an application for a grant may be approved by the State educational agency (SEA). As the law presently reads, this requirement affects the entire application, not just that portion pertinent to private school children.

The law also stipulates that each State submit an assurance of compliance with this requirement and with several others in the Act.

Regulations and Guidelines

The regulations and guidelines spell out in detail the requirements of the law and the manner in which the law may be carried out.

To avoid proceeding through these documents line by line, the subject matter is grouped here topically in an attempt to pull together under one heading whatever has been officially said on a given topic.

Eligibility of Private School Participants

In order to determine the eligibility of Title I participants from private schools, the role of private school children in attendance areas must be assessed. Attendance areas are selected on the basis of large concentrations of children from low-income families. All of the children who live within that public school attendance area are considered, regardless of whether they are enrolled in a public school, a private school, or not enrolled in any school. The purpose in selecting an attendance area is to identify the target population which is eligible to receive Title I services--not to determine eligible schools.

Once the eligible attendance area(s) is established, there are two basic conditions that identify eligible children:

(1) The child must live within the designated area; and

(2) The child must be educationally deprived according to the criteria established by the State or local educational agency.

If a child qualifies on both counts, he may be considered for Title I services, no matter where he is enrolled. However, this does not mean that every child who meets these criteria of residence and educational deprivation has an absolute right to Title I services. Each LEA is expected to concentrate its services on a limited number of high priority needs and on those children who are most in need of special assistance. This principle of concentration applies both to private school children and their needs and to public school children and their needs.

The consistent application of these concepts will resolve most eligibility problems. If educationally deprived students residing in the project area attend a private school outside the project area, they are still eligible for services, and the services may be rendered wherever it is most advantageous for the student. The services may be performed outside the project area for educationally deprived students who live in the project area. On the other hand, if a private school, located within a project area, draws students from outside the project area, those students are not eligible for Title I services even if they are educationally deprived.

Children who attend a private school which charges tuition are not thereby excluded from Title I services. An economic criterion is never applied to the individual child, either public or private school enrollee, who resides in an eligible attendance area. Neither is an economic criterion applied to the private school nor to private school population, because the private school is not the recipient of services.

Consequently, the fact that a private school has an endowment or that a very small percentage of the students benefit from AFDC payments does not, in itself, disqualify the educationally deprived students at that school from receiving Title I services.

The most difficult situation arises in those school districts where there are no well-defined attendance areas and eligible schools are determined rather than eligible attendance areas. In such instances, the eligible school is always a public school, and the eligible population is the enrollment at that public school. Program Guide 64 points out that, in such a case, the private school children who "will attend or could attend that school" are not precluded from participation. In other words, if they are educationally deprived, they are eligible. The problem involves determining which private school enrollees will or could attend the eligible public schools. In most cases the LEA will have a set of criteria for determining the enrollment of a particular public school. In close consultation with private school representatives, these criteria should be applied to the private school enrollment as a potential public school enrollment. Such an application should result in the identification of the private school children who "will or could" attend a given public school.

Because the private school itself is not eligible to receive Title I benefits and because Title I is a supplementary program, services may not simply go to all the students in a particular class or to the student body at large in a particular school, either public or private.

Provision of Services

Title I services are not specified by a predetermined set or list but are determined by the needs of the students. Services are no more specified for the private school child than they are for the public school child. As a group of children displays certain high priority needs, programs should be mounted to provide services which respond to those needs. The services for private school children do not have to be the same as, nor do they have to be different from, those provided for the public school children. In both instances, the services must respond to demonstrable needs.

This is not to say that restrictions are not encountered in providing services for private school children. The important consideration is that restrictions, by and large, are not to be placed upon the type of services to be provided but rather upon the manner in which the services may be delivered.

Extent of Services

Both the kind of service to be offered and the extent of its being offered are determined by a process of planning, needs assessment, priority setting, and decisionmaking at the local level. There is no Federal requirement that a certain amount or percentage of money must be spent on each private school child--or, for that matter, on a public school child--nor is there any formula or decree as to the number or percentage of children who must be served.

What constitutes a "fair share" of Title I services for the private school child? The regulations require that the public school district provide "genuine opportunities" to private school children to participate in special educational services provided by Title I funds. These genuine opportunities must be consistent with the number of educationally deprived children and the nature and extent of their educational deprivation. Program Guide 44, Criterion 4.5, states that the services for eligible children in private schools should be comparable in scope, quality, and opportunity for participation to those provided for public school children with needs of equally high priority. This same criterion asserts that the comparability of services should be achieved in terms of the number of educationally deprived children, the nature of their needs, and an equitable sharing in Title I resources.

Basically, what the regulations and guidelines are saying is this: When a group of children in a private school are found to have a need which is similar (not identical) to a need found in a group of public school children, the response to that need with Title I resources should be similar (not identical) in scope, quality, and opportunity for participation for both groups.

This presupposes that the educationally deprived children in the private school have been identified and that the nature and extent of their deprivation have been assessed. If this has not been done, it is impossible to say whether genuine opportunities have or have not been provided. The local educational agency (LEA) should be able to produce proof of such a needs assessment.

Program Guide 24, Section 10, points out the following as examples of participation that would not meet the regulations: Providing services at inconvenient hours, equating a trip to the zoo with extensive remedial instruction, or expending one dollar for an educationally deprived child in a private school as compared to 10 dollars (or more) for an educationally deprived child in a public school.

Role of the Private School and the Private School Administrator

The uniqueness of Title I stands out, perhaps more than at any other time, when the role of the private school as an institution or of the private school official is considered. The law very explicitly states that the educationally disadvantaged child living in an eligible attendance area, who is enrolled in a private school, is an eligible recipient of Title I services. However, no funds may go directly to a private school or private school official.

Under Title I, the public school authority must maintain ultimate control over and responsibility for the program. However, the regulations require public school officials to consult "with persons knowledgeable of the needs of these private school children." The guidelines assign a consultative role to private school "authorities" and private school officials.

The initiative for seeing to it that private school children are served rests legally with the public school agency. It is obviously to the advantage of the private school child if the private school administrator takes it upon himself to make contact with the public school agency and to assist in the implementation of Title I activities.

The private school administrator can make a claim to be consulted concerning the needs of private school children and to be involved in the planning process because he is a "knowledgeable person" as referred to in Section 116.19(b) of the regulations. It should be noted that the regulations, by treating the matter separately, regard consultation with private school representatives as something apart from meetings with advisory committees or parent councils. The consultation with private school representatives would be of a detailed and technical nature, getting into the areas of diagnosis, needs assessment, evaluation design, etc. The results of this type of consultation would be brought to an advisory committee or parent council. Consequently, the inclusion of a private school representative on an advisory committee or a parent council does not automatically insure compliance with the consultation requirement in Section 116.19(b).

Title I creates the unusual situation in which an educational program may operate within the private school structure but be totally removed from the administrative control and responsibility of the private school. The following are examples of conclusions drawn from this interpretation of the private schools' responsibility under Title I:

* The maintenance of fiscal effort requirement does not apply to private schools.
* A private school may not contract with the LEA to administer a Title I program. This does not prevent a private agency from performing a service other than administration under contract.

* The prohibition against the use of Federal funds to supplant State or local funds does not apply directly to private schools. However, Federal funds may not be used to provide services which are normally provided by the private school.
* Ultimately, the public school agency has legal responsibility to determine the needs of, gather data on, and evaluate the progress of the private school children in Title I activities. These tasks are included among those for which monies may be expended by the LEA. Private school officials and personnel are expected to cooperate with the public school agency in the execution of these tasks.

Since the private school itself cannot receive funds or services, the Act does not make strict demands on the private school or the private school administrator. Administrative services or funds are not received, and, therefore, administrative tasks are not required. An important exception to this general rule lies in the area of civil rights. The private school authorities must sign the civil rights compliance statement before Title I services may be rendered on the private school premises. This prevents Title I services from being performed in schools or academies which are established for purposes of segregation.

Involvement of Parents of Private School Participants

The new regulations for Title I [Section 116.17(1)] call attention to the fact that the LEA should take "appropriate measures to insure the selection of parents to the parent council who are representative (a) of the children eligible to be served (including such children enrolled in private schools) . . ." Parent councils should be organized to give the parents of private school children the opportunity to be members of the council. Care should be taken to avoid an organizational design which would, in effect, exclude the parents of private school children. This could happen in a situation in which the members of the parent council were selected from the public school PTA groups. However, the regulations do not prescribe that a certain number or percentage of parents of private school children must be included on the council.

Delivery of Services

Title I services may be provided, within certain limitations, for private school students in the manner that is most effective in the local situation. No one way of delivering services is mandated by the law or regulations, only a few methods of delivery are prohibited. Both the law and the regulations cite examples of how services might be provided; but these examples are not meant to be exhaustive of the possibilities available.

One method mentioned in the law is dual enrollment. The private school child, retaining membership in the private school, attends the public school for special educational services on a part-time basis. The major problem in this approach is logistics. Even when the private school is located very close to the public school, there are difficulties in scheduling, space, safety, etc. As distance increases, additional problems of transportation and loss of instructional time are likely to arise.

Another method involves mobile educational services. The services come to the child. This approach may take many forms, such as: A public school teacher comes onto the private school premises to teach a remedial class; a mobile teaching lab with equipment and a teacher makes regular scheduled stops at a private school; a speech therapist works with private school children at the private school. This type of approach, while not problem free, is generally more satisfactory than most others.

Mobile equipment is also cited as a way to provide services for private school children. However, equipment alone does not constitute a program. The equipment loaned must be in support of a Title I activity and must remain under the supervision and administrative control of the public agency at all times. The equipment may be used and housed on private school premises as long as it will be used only for carrying out a Title I activity.

Restrictions and Prohibitions

Most of the restrictions or prohibitions which apply to services for private school children refer to the manner in which the services are delivered. While some of the restrictions and prohibitions were mentioned earlier in the text, they are repeated here so that all the restrictions and prohibitions that are contained in the law, the regulations, and the guidelines may be found in one place. The restrictions or prohibitions are:

1. The services provided with Title I funds must meet the needs of educationally deprived children and not the needs of the private school.
2. In any project where private school students participate along with public school students in public facilities, the classes may not be separated according to school or religious affiliation.
3. Public school personnel may perform services on private premises only to the extent necessary to provide special services for the educationally deprived for whose needs the services were designed.
4. The services which may be provided are limited to special services[1] normally not available in the private school.

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1. The regulations, in Section 116(e), illustrate what is meant by special services by including several examples, such as "therapeutic, remedial, or welfare services, broadened health services, school breakfasts for poor children, and guidance and counseling services." The list is meant to be illustrative and not exhaustive of the possibilities.

(A service is special if it responds to an identified, special need of the child.)

5. The services provided with Title I funds must always remain under the administrative direction and control of a public agency. These services may not be administered by the private school.
6. Title I funds may not be used to pay the salaries of private school employees.[2]
7. The equipment loaned for the use of private school children on private premises can only be of a mobile or portable nature.
8. The equipment loaned must always be under the administrative control of a public agency.
9. The equipment, when located on private premises, may be used only for a Title I activity.
10. The equipment must be removed when necessary to avoid its being used for other purposes.[3]

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2. This does not prevent, however, paying private school employees for services performed outside their regular hours while under public control and supervision, nor does it prevent the payment of travel expenses, stipends, etc., to private school teachers participating in workshops as described in Program Guide 24, Section 9. There is no language in Title I which would prevent the hiring of a member of a religious community as a public school employee.

3. This does not mean, however, that the equipment necessarily must be picked up each spring and warehoused during the summer on public premises unless a failure to do so would result in its use for other than Title I activities during the summer.

11. The construction of private school facilities is forbidden.
12. No Title I funds may be used for religious worship or instruction.
13. Work-study assignments may not be made in such a way as to enhance the value of private premises or supplement activities normally financed by the private school.
14. Teacher aides performing services on private premises, as well as those in public schools, must be involved directly in a Title I activity.
15. Title I funds may not be used to contract with a private school to administer a Title I activity.

II. SUGGESTED PROCEDURES

During the development of a Title I project application, there are several steps and points of contact which are critical to secure the meaningful participation of children from the private schools.

1. Identify a staff person in the LEA to be responsible for the participation of private school children in Title I. If at all possible, this person should have a thorough knowledge of private school organization in the district. The private school representatives should be encouraged to establish a counterpart in their schools or central offices.
2. Make sure that children attending private schools have been included in the selection of eligible attendance areas.
3. Identify all the private schools in the project area. In smaller districts this is not a big problem. In large cities it can become a major project. The U.S. Office of Education publishes a directory of nonpublic schools, and private school representatives are often well-informed about the existence of other private schools. The emergence of street academies and store-front schools makes this step more complicated. Private school representatives should be encouraged to form some type of loose association for easier communication.
4. Identify all children attending the private schools in the project area who also reside there. Contact and

cooperation with private school representatives is essential. In most instances, the private school representatives will have this information readily available.

5. Identify all the children residing in the project area who attend private schools outside the project area. What at first seems like a mammoth task can be significantly reduced by contacting the private schools close to the project area, and such groups as the local churches within the project area.
6. In terms of the established goals and objectives, assess the needs of these educationally deprived children. Again, consultation with private school representatives is essential. The basis for assessing the needs of these children must be comparable, but not necessarily identical, to criteria used for public school children.
7. On the basis of the needs thus identified, and in consultation with private school representatives, determine and design the type of service to be provided. The evaluation design should be developed concomitantly and also in consultation with private school representatives.
8. Establish a process to insure a quick and effective response by appropriate officials to complaints involving the participation of private school children in Title I activities.

9. Be sure the parents of eligible private school children are represented on the Title I parent council.

The inclusion of private school representatives on mailing lists and at Title I meetings guarantees ongoing and up-to-date coordination in developing the project. Private school people will find the participation of their students generally enhanced if they arrange for appropriate personnel to attend meetings and assist public school employees in gathering data necessary for project development and program planning. Private school representatives should be encouraged to publicize Title I meetings among their own constituents.

III. SPECIAL PROBLEMS

Federal law and regulations contain a number of inherent complexities in the provision of services for educationally deprived children in private schools. The situation is not eased as the law is implemented in each of the 50 States, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the District of Columbia, and the Bureau of Indian Affairs. A handbook of this type would be incomplete without at least identifying some of the major problem areas encountered at the State and local levels in the implementation of this Title I requirement.

State Constitutions and Statutes

Many State departments of education found severe restrictions with respect to the kind of services that their respective State constitutions and statutes allowed them to provide to private school students, especially when those private schools were owned and operated by religious groups.

The following list illustrates the kind of prohibitions encountered when State constitutions and laws are applied to Title I. The list is not exhaustive.

* Dual enrollment may not be allowed.
* Public school personnel may not perform services on private school premises.
* Equipment may not be loaned for use on private school premises.
* Books may not be loaned for use on private school premises.
* Transportation may not be provided to private school students.

Sometimes such prohibitions exist singly in a given State. Often, the prohibitions exist in combination.

When ESEA was passed in 1965, each State submitted an assurance to the U.S. Office of Education in which the State department of education stated its intention to comply with Title I and its regulations, and the State attorney general declared that the State board of education had the authority, under State law, to perform the duties and functions of Title I as required by the Federal law and its regulations. While State constitutions, laws, and their interpretations limit the options available to provide services to private school students, this fact, in itself, does not relieve the State educational agency of its responsibility to approve only those Title I applications which meet the requirements set forth in the Federal law and regulations.

A number of school officials realized that they could not submit the required assurance because of the restrictions applying to private school students which were operative in their States. The impasse was sucessfully resolved in one case by a State attorney general's opinion which held that State restrictions were not applicable to 100 percent federally financed programs.

Other States have proposed legislation which would allow the SEA to administer Title I according to the Federal requirements. Still others have applied the restrictions of the State to Title I and have relied upon the initiative of school administrators to develop a program that would meet the Federal requirements.

Administrative Organization and Structure

The organizational structure of both public and private schools creates a number of hindrances to optimal implementation of Title I. With the passage of ESEA, the public school agency suddenly found itself with a responsibility for certain private school children without the personnel or structure to honor that responsibility. The LEA and the SEA, by and large, had little information on private school children. Public school personnel were trained with a totally public school orientation. In only the rarest of occasions did a staff position carry with it specific responsibility for relationships with the private school sector. In some instances, there had been a conscious effort to maintain a "hands-off" attitude towards private schools in areas such as school accreditation and teacher certification.

Within the private school sector, administrative organization presented even more difficulties. Obviously, there is no one central office for all private schools. In cases where the school is operated by other than church groups, each school constitutes a discrete and autonomous unit. Each religious group has its own particular kind of structure. The Roman Catholic Church administers the largest single block of private schools, and they have the greatest degree of central organization. Nevertheless, these schools may show a variety of organizational patterns and lines of authority within a single LEA. Even when there is some central office, the staff is small.

Therefore, the public school official has trouble contacting the appropriate person in the private school sector to assist in the identification of the children eligible for Title I services.

The private schools often do not have the data and lack the capacity to develop the data needed for programing. Moreover, misunderstandings develop when a private school administrator is by-passed in the consultation process simply because the public school administrator mistakenly thinks he has "touched all the bases."

Another organizational problem arises from the fact that private school attendance areas are not coterminous with public school attendance areas. When private schools are organized into systems, such systems generally include many public school districts. Because Title I project areas are determined along public school attendance areas, and projects are commonly developed by single public school districts, administrative problems and misunderstanding develop.

Several States and some local districts have found it essential to designate a liaison officer to handle affairs between public and private school officials. Ideally, this person should be thoroughly familiar with private school organizational lines. Such an arrangement exists in Connecticut, where an administrative aide at the SEA level was given specific responsibility for providing leadership in the involvement of private school children. In Chicago, a new office with responsibility for public-nonpublic school relations was established. As part of the Title I application a few States incorporate a signoff by local private school administrators to assure proper involvement.

Some private schools are making organizational changes so that information on their students can be more readily available to the public school agencies. Several nonpublic school associations have

been organized within State boundaries. Almost half of the Roman Catholic dioceses have established a staff position with primary responsibility for assisting in the implementation of Federal programs in which private school children can participate. Another solution has been found in the formation of committees which cut across public and private school lines for the purposes of working out mutual problems.

The single most effective means to overcome organizational deficiencies is the involvement of private school representatives in the planning process.

Logistics

Not the least of the difficulties in including private school children in Title I activities are the problems of scheduling, transportation, hiring and assignment of personnel, purchase and inventory of equipment, and arrangements for space. In those States in which public school personnel may not perform services on private premises, the difficulties are compounded.

There are no easy solutions to the logistical problems. However, when the legal situation allows several options and good will exists between public and private school representatives, the logistical problem can be solved or reasonably reduced.

Leadership Needs

Because in most cases the participation of private school children in Title I services called for the breaking of new ground, the local administrator found himself in need of leadership and guidance.

At times, a lack of clarity and direction created problems for the local administrator. While this present publication is expected to solve some of these problems, the State also needs to exercise a much more aggressive role in seeing that this provision of Title I is implemented. Through policies, support materials, and conferences, the State should assist the local administrator to understand the implications of both the Federal and the State laws.

IV. EXCERPTS FROM THE LAW, REGULATIONS, AND GUIDELINES

The following citations from the law, regulations, program guides, and advisory statements contain the explicit references in these documents which relate to the participation of private school children in Title I programs and which are currently in effect. This part is indexed on pages 51 and 52 for easy reference.

The Law

These citations refer to the Elementary and Secondary Education Act (P.L. 89-10) and its amendments.

Section 105 (a)

> A local educational agency may receive a grant under this part for any fiscal year only upon application therefor approved by the appropriate State educational agency, upon its determination (consistent with such basic criteria as the Commissioner may establish)

Section 105(a)(2)

> that, to the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency has made provision for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate;

The Regulations

Regulations for Title I of the Elementary and Secondary Education Act of 1965, Public Law 89-10, are cited in Title 45, Part 116 of the Code of Federal Regulations, revised and amended as of November 28, 1968.

116.17 Construction of Facilities

(i) No application for a project grant under Title I of the Act may cover the construction of school facilities unless such construction is demonstrated as being essential in order to assure the success of a program or project under Title I of the Act. If the construction of school facilities is so demonstrated as being essential for a program or project, the application must nevertheless comply with other requirements of Title I of the Act and the regulations in this part, such as the requirements in Section 116.21 in regard to labor standards and overall State construction planning and, in relation to the overall program, the requirements in Section 116.19 in regard to participation by children enrolled in private schools.

Parental Involvement

(o) (2) (i) That the local educational agency has taken appropriate measures to insure the selection of parents to the parent council.who are representative (a) of the children eligible to be served (including such children enrolled in private schools) and (b) of the attendance areas to be included in the Title I program of such agency.

116.19 Participation by children enrolled in private schools

(a) Each local education agency shall provide special educational services designed to meet the special educational needs of educationally deprived children residing in its district who are enrolled in private schools. Such educationally deprived children shall be provided genuine opportunities to participate therein consistent with the number of such educationally deprived children and the nature and extent of their educational deprivation. The special educational services shall be provided through such arrangements as dual enrollment, educational radio and television, and mobile educational services and equipment. Such opportunities shall be made available to those educationally deprived children who reside in the public school attendance area designated as the project area or in a geographical area reasonably coterminous with the project area. If it is not practicable to apply a project to children enrolled in private schools because they are enrolled in a private school located in another school district, the applicant may make arrangements for such

children with the local educational agency serving such other school district, including where appropriate the making of a joint project application.

(b) The needs of educationally deprived children enrolled in private schools, the number of such children who will participate in the program and the types of special educational services to be provided for them, shall be determined, after consultation with persons knowledgeable of the needs of the private school children, on a basis comparable to that used in providing for participation in the program by educationally deprived children enrolled in public schools.

(c) The opportunities for participation by educationally deprived children in private schools in the program of a local educational agency under Title I of the Act shall be provided through projects of the local educational agency which furnish special educational services that meet the special educational needs of such educationally deprived children rather than the needs of the student body at large or of children in a specified grade. The application for each project shall show the number of educationally deprived children enrolled in private schools who are expected to participate therein and the degree and manner of their expected participation.

(d) Any project to be carried out in public facilities and involving a joint participation of children enrolled in private schools shall include such provisions as are necessary to avoid classes which are separated by school enrollment or religious affiliation of the children.

(e) Public school personnel may be made available on other than public school facilities only to the extent necessary to provide special services (such as therapeutic, remedial, or welfare services, broadened health services, school breakfasts for poor children, and guidance and counseling services) for those educationally deprived children for whose needs such special services are designed and only when such services are not normally provided by the private school. The application for a project including such special services shall provide assurance that the applicant will maintain administrative direction and control over those services. Subject to the provisions of Section 116.20, mobile or portable equipment may be used on private school premises for such period of time within the life of the current project for which the equipment is intended to be used as is necessary for the successful participation in that project by educationally deprived children enrolled in private schools. Provisions for

special educational services for educationally deprived children enrolled in private schools shall not include the paying of salaries for teachers or other employees of private schools, except for services performed outside their regular hours of duty and under public supervision and control, nor shall they include the using of equipment other than mobile or portable equipment, on private school premises or the constructing of private school facilities.

(f) In the event that the special educational needs of the educationally deprived Indian children attending private schools on a reservation cannot be met by the appropriate local educational agency because of the remote location of those schools, the Department of the Interior shall design its program to meet the special educational needs of such educationally deprived Indian children through appropriate arrangements that provide genuine opportunities for participation by such educationally deprived Indian children which are consistent with the number of such children and the nature and extent of their educational deprivation.

(g) The foregoing provisions of this section, other than those relating to the construction of private school facilities, do not apply to the use of funds granted to a State agency because of its direct responsibility for providing free public education for handicapped children or for children in institutions for neglected or delinquent children.

116.20 Title to property and control over funds

(b) Equipment acquired with funds provided under Title I of the Act may, in certain cases, be placed on private school premises for a limited period of time, but the title to and administrative control over such equipment must be retained and exercised by a public agency. In exercising that administrative control, the public agency shall not only keep records of, and account for, the equipment but shall also assure itself that the equipment is being used solely for the purposes of the project, and remove the equipment from the private school premises when necessary to avoid its being used for other purposes or when it is no longer needed for the purposes of the project.

116.22 Provision for measurement of educational achievement and evaluation of programs.

(c) The evaluation of programs and projects should, consistent with the nature and extent of participation by children

enrolled in private schools, be extended to such participation.

116.53 Allowable expenditures.

(e) None of the funds under Title I of the Act may be used for religious worship or instruction.

116.55 Inventories of equipment.

(a) Each State and local educational agency shall maintain an inventory of all equipment it has acquired with funds under Title I of the Act and placed in the temporary custody of persons in a private school. Such inventories shall be maintained until the equipment is discharged from such custody and, if costing $100 or more per unit, for the expected useful life of the equipment or until its disposition.

Program Guides

Program Guide #24

(Originally known as Policy Manual for Title I ESEA of 1965)

Section 1--Work-Study Assignments

Work-study assignments may be given to selected educationally deprived children for the purpose of providing them with the financial assistance they need in order to continue in school and to benefit from regular school and Title I activities. Such assignments would normally be carried out on public premises but may be carried out on the premises of private nonprofit organizations, including private schools, provided the assignees are **not** paid for services that:

(1) Are related to religious instruction or worship,

(2) Enhance the value of private school premises, or

(3) Supplement activities normally financed by a private school.

Section 2--Projects Involving Construction

(Ed. note - This section contains a number of guidelines relative to items to be evaluated in reviewing an application which includes construction. To this section a special note was appended as follows.)

NOTE. There are no Federal funds for the construction of nonpublic educational facilities below the college level, although there are a number of Federal programs which provide assistance to nonpublic school children, including Title I, ESEA

Section 3--Civil Rights Assurances To Be Required from Nonpublic School Authorities

Civil Rights Assurances must be supplied by private school authorities before any of their children or teachers can participate in Title I project activities. The decision to require these assurances is based on the premise that it would be inconsistent to allow children in segregated private schools to participate in federally financed programs while requiring public school systems to desegregate before their children can participate.

The applicant local educational agency under Title I should secure a signed form HEW 441C from the appropriate private school authority provided it does not operate schools on a segregated basis. The signed form should be forwarded to the State educational agency. A bulletin was sent to Title I Coordinators explaining the procedures to be followed when a private school authority acknowledges that it has been operating schools on a segregated basis or when the State or local educational agency finds that the private school authority is not qualified to sign the form because it operates one or more schools on a segregated basis.

Section 5--Use of Equipment for Non-Title I Purposes

Inquiries have been made concerning the use of equipment (purchased with Federal funds for the purpose of helping meet the objectives of an approved Title I summer program) during the regular school term when an approved Title I project is not in operation.

The specific problem and questions growing out of it are as follows:

A school district conducts an approved Title I summer program. Eligible public school and parochial school pupils participate in the program. Equipment is purchased with Federal funds for the purpose of helping meet the objectives of the program. The school district does not conduct an approved Title I program during the next regular school term.

1. Is it permissible for the public school to use the equipment, purchased under the conditions described above, during the regular school term?

2. Is it permissible for the public school to loan the equipment, purchased under conditions described above, to parochial teachers and/or pupils?

With respect to the first question, it is, with certain qualifications, permissible to use equipment purchased with Title I funds, for non-Title I purposes. The principal qualification is that this use not interfere with the Title I purposes for which the equipment was purchased. This is particularly significant when the period of use for non-Title I purposes far exceeds the period of use in Title I projects. Although the periods of use do not overlap, wear and tear and other depreciation may so affect the efficiency and life of the equipment as to amount to an interference with the Title I project.

In addition, the underlying purpose of Title I is to provide special kinds of educational aid to a specific and limited group of children, i.e., the educationally deprived. If the non-Title I use of equipment becomes disproportionate in relation to the Title I use, it begins to appear that the equipment is in reality being used as general aid, which is in violation of the Act and the Regulations. [P.L. 89-10, sections 201, 205(a)(1) and 206(a)(1) and 45 CFR 116.18(a) through (d).]

In essence, our qualifications concern themselves with the degree of use. A non-Title I use, reasonable in light of the foregoing, is not prohibited.

With respect to the second question, we would call attention to perhaps one of the most basic considerations in the genesis of P.L. 89-10. It was recognized from the inception that Federal aid could not go to private schools as institutions. However, it was felt that as a result of the specific purpose of the Act (meeting special educational needs of educationally deprived children) this problem was avoided. With this history in mind, section 116.19 of our Regulations was very carefully worded to avoid the possibility of aid to private school children under the Act assuming any semblance of general aid. While the same prohibition against general aid applies to projects for public school children, the additional sensitivity of the "church-state" relationship does not exist in those cases.

In light of the foregoing, we must conclude that equipment purchased with Title I funds may not be loaned to private schools or private school students or put to use in a private school for uses other than those included in an approved Title I project. While this would establish a different rule

for private schools and public schools, the entire question of non-Title I usage of Title I equipment is not directly referred to in the Act and we must draw our authority from this history and underlying considerations leading up to its enactment.

We have some general reservations with respect to the use being made of the equipment in question. Apparently, that equipment is being used for only 3 months of the year. Our Regulations provide:

> The budget for a project shall avoid extravagant expenditures which would defeat the intent of the Act. . . . (45 CFR 116.18(a)) (Emphasis added)

The determination of "extravagance" not only must be made only the basis of the absolute cost of the item but also should take into account that cost relative to the degree of use to be made of the equipment. A set of encyclopedias costing $500 might not be "extravagant" in an absolute sense, but if that set were used only one day in connection with a Title I project and not used again, the purchase of those encyclopedias could be considered "extravagant."

Furthermore, when equipment is being used for other than Title I purposes for such a disproportionate period of time, it is questionable whether it has been purchased for Title I purposes in the first instance or whether it is not being used for general aid. This is particularly true when you consider the wear and tear which must necessarily occur during any extensive non-Title I use.

Section 7--Rental of Classroom Space by Local Educational Agency from Parochial School for Operation of Public Program

The question was raised whether it would be legal under Title I of P.L. 89-10 (Title II of P.L. 81-874) for a local educational agency to rent, as part of a project for the provision of special services to educationally deprived children, additional, needed, classroom space from a private, parochial school.

The answer to this question is in the affirmative; Federal funds may not, however, be used to pay any part of the rental of space which is so designed as to carry a clearly religious impact (such as a chapel). To do so might run counter to the decision of the United States Supreme Court in the case of the School District of Abington Township v. Schemmp [374 U.S. 203 (1963)], where the court ruled against the use of public funds for the provision of Bible instruction of general religious impact. Section 116.53(c)(10) of the Regulations for Title I

of P.L. 89-10 permits the rental of space where it is necessary to enable a local educational agency to carry out a project for providing services to educationally deprived children. This section reads as follows:

> Federal funds made available under Title I of the Act to local educational agencies and to State educational agencies may be used only for those expenses which are incurred as a result of the grant program under that title. They include expenses such as those for:
>
> > (10) The acquisition of leasehold and other interests in land necessary for local educational agencies to carry out approved projects successfully.

The general provision forbidding the use of Title I funds for religious purposes has been incorporated into the Regulations at section 116.46(e), which states:

> None of the funds granted to States under Title I of the Act may be used for religious worship or instruction.

The combination of sections 116.53(c)(10) and 116.46(e) does not lead to the conclusion that a prohibition was intended on the rental of space from a religiously affiliated private agency any more than from any other private or public agency.

If the space is religiously neutral (that is, it is not such as can be expected to carry a religious impact on the children), and the purpose for which it is rented is also religiously neutral, the ultimate ownership would not appear to be an important question. The rented property can be treated, pro hac vice, as the property of the local educational agency. Discretion would suggest that, as a policy matter, religious symbols which may be affixed to the rented premises should be hidden from the view of the teachers and children while the space is rented with public funds.

It is, of course, true that the rental payments to be made for the classroom space will benefit a religiously affiliated organization, but so would payments for the purchase of educational materials from a manufacturer part of whose stock was held by religious organizations.

In this case, the conferring of a benefit is not the test. It is not a question of ultimate ownership of the premises, but of whether a legitimate quid pro quo of a nonreligious nature is being received by the public in return for the payments made. There is a long train of both Federal and State cases drawing this distinction; see, for example, Bradfield v. Roberts

[175 U.S. 291 (1899)], dealing with hospital services in the District of Columbia; Cochran v. Louisiana [281 U.S. 370 (1930)], which dealt with the provision of textbooks for the use of children; Schade v. Alleghany County Institution District [386 Pa. 507, 126 A. 2d 911 (1956)]; and Opinion of the Justice [99 N.H. 519 11 3 A. 2d 114 (1955)], both of which dealt with the provision of care for wards of the State.

We are, therefore, of the opinion that such rental payments, if they are legitimately made, and are not payments intended for sectarian instruction or worship, may be made under Title I of P.L. 89-10.

Section 9--Availability of Travel and Luncheon Money to Private School Persons Attending Inservice Title I Training Programs

One State department of education has refused to make payments for travel and luncheon to nonpublic school employees participating in an inservice training project conducted by a local educational agency under Title I of the ESEA (Title II of P.L. 81-874). Apparently, payments in that regard are made to public school persons so participating. The State department of education has, in so refusing, relied upon the statement in a memorandum, dated January 5, 1966, from the Director of Program Operations, BESE, to Division staff, as follows on page 4:

> c. Teachers who are regularly employed in private schools may receive inservice training under Title I projects only if they are definitely committed to such a project as an employee of the applicant local educational agency.

By letter dated February 25, 1966, the State Title I Coordinator has requested an opinion regarding the legality of such payments to nonpublic school employees.

The above-quoted sentence is apparently intended to reflect the view taken by DCE that inservice training of teachers only indirectly constitutes aid to educationlly deprived children, and the aid to such children is dependent upon the training being put into practice with respect to such children. Accordingly, inservice training is considered to be a proper Title I project only if the participants are committed to an operational project under Title I, which means a project serving educationally deprived children in areas having a high concentration of children from low-income families. Such a concept is a justifiable one and in keeping with the provisions and legislative history of Title I.

The requirement that the private school employees must be committed to becoming employees of the local educational agency seems to be based upon a concept that no private school employees can, as such, participate in a Title I project. This is in turn based upon the statement on page 12 of Senate Report No. 145, 89th Congress, 1st Session, as follows:

> . . . the Committee has reviewed carefully language in the bill, to assure that the local educational agency will maintain administrative supervison and control of the programs provided under the title and that the title to any property constructed or purchased shall be in a public agency and that a public agency will administer the funds and property for the purposes of the title.

The substance of the Committee's comments is reflected in 116.20 of the regulations. However, while one cannot become a public school employee without being under the administrative supervision and control of the local educational agency, the converse is not true. Indeed, the Committee's statement and the provisions of the Act and regulations are directed at supervison and control over programs or projects and administrative control over the grant funds and property derived therefrom, rather than at supervision and control over the persons themselves. While the distinction may be a fine one, it certainly does not require that the persons become public school employees in order to play a part in a Title I project. Indeed, an arbitrary requirement that a private school employee shall become an employee of the public school system to the extent of his involvement in a Title I project would tend, at least, to violate the prohibition in Section 116.19 (d) of the regulations against the paying of salaries of teachers or other employees of private schools. Moreover, the training may constitute that part of a Title I project that relates to the discrimination of information relating to education for program planning and operation under Title I. See Section 116.25(a) of the regulations, which refers specifically to "inservice education".

In view of the foregoing, the quoted sentence in the memorandum of January 5, 1966, should be amended to read substantially as follows:

> Teachers who are regularly employed in private schools may receive inservice training under Title I projects only if they are definitely committed to serving educationally deprived children in a Title I project and if the inservice training would assist them in so serving.

Returning to the specific question raised by the State department of education, stipends, travel allowances, and luncheon money are not regarded as payments of salary. Accordingly, the payment of those items to teachers or other employees of private schools is not precluded by the Act or the regulations. Indeed, the failure to make such payments to private school persons on the same basis as such payments are made to public school persons would cast doubt on whether adequate opportunity has been made for children enrolled in private schools to participate in the project. It is recognized that the participation by children in such a project is a vicarious participation through the teachers who receive the inservice training until the training is put into practice with those children in a Title I operational project.

Section 10--Extent of Personal Services on Nonpublic School Property

When a Title I project provides for participation therein by children in nonpublic schools and when it is appropriate to provide for such participation on nonpublic school property, public employees may be used for that purpose. This would include not only teachers, but also aides who are necessary for effectively carrying out an otherwise proper Title I project.

However, the use of such an aide to provide general assistance to a nonpublic school teacher would constitute aid to the nonpublic school, which is not authorized by Title I. This would be true even if the assistance being rendered were intended to free the regular nonpublic school teacher to perform functions with respect to a proper Title I project. Aside from the remoteness of any connection between the services of the aide and the Title I project itself, the aide himself would thereby become, in effect, a nonpublic school employee under the supervision of the nonpublic school teacher whom he is assisting. Accordingly, the payment of his salary or wages would be expressly prohibited by the terms of Section 116.19(d) of the Regulations.

Contracts for Nonpublic School Involvement in Title I

This is in reply to a letter in which the question was asked if it would be permissible under the Elementary and Secondary Education Act of 1965 (P.L. 89-10) for the State Department of Public Instruction to approve a Title I project, submitted by a local educational agency, which includes a contract with a nonpublic school to administer a program for the educationally deprived children attending the nonpublic school.

The answer to both of your questions is in the negative. Section 116.20(a) of the Regulations for the Title I program provides that:

> Each application . . . shall provide assurance that the control of Federal funds granted pursuant to the application, and title to property acquired with such funds . . . shall . . . be in a public agency for the uses and purposes provided in Title II of the Act (Title I of P.L. 89-10), and that a public agency will administer such funds and property for carrying out the purposes of the project. (Emphasis added)

Any contract which would permit a privately controlled agency to exercise administrative control over the development and operation of a portion of a Title I project and thereby determine how, when, or where Title I funds would be employed or property used would violate the intent of this Regulation. That is not to say that an arrangement could not be made to lend equipment and even public school personnel to help carry out certain parts of a Title I project on private school premises for the benefit of educationally deprived school children. Nor is it intended to imply that services for such children could not be supplied through the use of private school personnel, even to the extent of providing inservice training for such personnel, including the payment of necessary stipends. Administrative control of a project, however, must remain with the local educational agency.

Regular vocational education programs for private school students conducted exclusively on private school premises would seem, without further information, to be merely a general aid in expanding the private school curriculum. To be included in a project it should be specially designed to meet the special educational needs of educationally deprived children and administrative control over its design and operation must remain in the public agency. In addition, the vocational program would have to be so operated as not to violate the prohibition contained in Section 116.19(d) of the Regulations, against using Title I funds to pay the salaries of teachers or other employees of private schools.

Involvement of Private School Students in Title I ESEA Projects

The careful analysis of the Title I projects received indicates a minimal involvement of private school students who live in Title I project areas. Furthermore, many application forms are deficient in that information on this important subject is either absent or fragmentary.

For example, many projects indicate that private school children who live in the area are not participating, but there is no explanation as to why. Other projects indicate participation but give no specifics as to when, how, or how much. Still others indicate that the services are "open" without any indication as to how this statement meets the requirements of Section 205(a)(2) of the Act which specifically requires "that, to the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency has made provision for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate."

Statements about services being "open" or "provisions being made for participation of private school students" without specific provisions being indicated do not meet the requirements of the law and regulations. Section 116.19(b) of the Rules and Regulations says in part: "The application for each project must show the degree and manner of expected participation by educationally deprived children enrolled in private schools in the program of the local educational agency under Title I of the Act. Opportunity for participation on the basis of geographical area must be substantially comparable to that with respect to children enrolled in public schools and the provision for such participation shall be designed to be applied, insofar as practicable, to children enrolled in private schools who reside in the areas affected by the program."

If a LEA does not know what the provisions are going to be when it makes official application for Federal funds, then the application should be regarded as incomplete until the LEA determines what it intends to do to satisfy this requirement of the Act.

A further problem is that of providing services at inconvenient hours and locations. Such inconvenient arrangements do not meet the "comparability" factor mentioned in the Regulations. Furthermore, some projects fail to provide meaningful participation of private school children. An example here is equating a trip to the zoo for private school pupils with extensive remedial instruction available only to public school pupils. A comparability expenditure ratio of one dollar for an educationally deprived private school child with ten dollars (or more) for an educationally deprived public school child would also fail to be really comparable or equitable.

Appropriate measures should be taken to instruct LEA's to (1) provide adequate information on this subject and (2) actually initiate comparable and equitable services for all educationally deprived students who reside in the project area.

Program Guide #44
March 18, 1968

Criteria for Applications for Grants to Local Educational Agencies under Title I, ESEA

Title I of the Elementary and Secondary Education Act of 1965 requires that the State educational agency make certain determinations "consistent with such basic criteria as the Commissioner may establish . . . ."

These determinations must be made with respect to: selection of project areas; size, scope, and quality of projects and their potential for meeting the needs of educationally deprived children; participation of children enrolled in private schools; coordination of the Title I program with other programs having the same objectives; dissemination of information; methods and procedures for evaluating the results of the program; and the training of education aides.

The following criteria are based on the law and the regulations and were formulated to meet the need for a set of general statements of the essential characteristics of an approvable Title I program. Each criterion (numbered and underlined) is stated as an affirmative "finding" and is followed by an explanation of some of the factors to be considered in developing a program that will meet the criterion.

Each local educational agency should review its Title I program to be sure that none of these criteria has been overlooked before submitting an application to the State educational agency for its approval.

The State educational agency will review the application and advise the applicant which criteria, if any, have not been met. Unless the State educational agency finds that each criterion has been met, the application may not be approved.

1. THE SELECTION OF ATTENDANCE AREAS FOR TITLE I PROJECTS

1.1 The attendance areas selected for Title I projects are those areas which on the basis of the best available information have high concentrations of children from low-income families.
Authority: 20 USC 241e(a)(1)

(Ed. note - This criterion defines the term "attendance area" and details the procedures to be followed in ranking and selecting attendance areas according to concentrations of children from low-income families. The two paragraphs which follow carry explicit mention of children attending private schools.)

> In all cases the number of children considered eligible to attend a particular school consists of all children of the appropriate ages including children attending private schools and children who have dropped out of school.
>
> The purpose of the attendance area requirement is to identify the "target populations" of children who are to be considered for participation in Title I activities on the basis of educational deficiency and need for special services. Thus, for schools without well-defined boundaries or where children have been transferring in or out on open enrollment or freedom-of-choice plans, the "target population" should include (a) all of the children who are attending the particular public school which on the basis of enrollment has a high concentration of children from low-income families; (b) children who would have been attending that school if they were not attending a private school or another public school under a freedom-of-choice, open enrollment, or another plan designed to bring about desegregation.

2. COMPREHENSIVE ASSESSMENT OF NEEDS

2.1 The priority needs of educationally deprived children in the eligible attendance areas (target populations) were determined in consultation with teachers, parents, private school authorities, and representatives of other agencies which have a genuine and continuing interest in such children. The evidence of need and the bases for the assignment of priorities have been documented.

Authority: 20 USC 241e(a)(1)

(Ed. note - While stressing the importance of needs assessment this criterion calls attention to the need for involvement on the part of private school represnetatives in the following paragraph.)

> It is essential that public and private school teachers and other staff members, parents, and representatives of related programs and agencies

be involved in the early stages of program planning and in discussions concerning the needs of children in the various eligible attendance areas. They are often able to corroborate or offer insights concerning the evidence of educational deficiencies. They will be much more likely to lend support to a program of special educational services if, as a result of their involvement, they understand the premises on which such a program is based.

3. PLANNING

3.1 The Title I program was planned as an integral part of a comprehensive compensatory educational program involving the coordinated use of resources from other programs and agencies.

Authority: 20 USC 241e(a)(1) and 883(c)

4. PROGRAM DESIGN

4.5 Educationally deprived children enrolled in private schools will have genuine opportunities to participate in the Title I program on the basis of need as determined by the comprehensive assessment of the needs of all children in the eligible low-income areas. The high priority needs of private school children residing in those areas will be met with services that are comparable in scope and quality to those provided to meet the high priority needs of public school children.

Authority: 20 USC 241e(a)(2)

The applicant's assessment of needs of children at various grade and age levels must include the children in the eligible public school attendance areas who are enrolled in private schools. This assessment is to be carried out in consultation with private school authorities and to provide the basis of (a) determining the special services in which private school children will have genuine opportunities to participate, and (b) selecting the private school children for whom such services are to be provided.

The needs of private school children in the eligible areas may require different services and activities. Those services and activities, however, must be comparable in quality, scope, and opportunity for participation to those provided for public school children with needs of equally high priority. "Comparability" of services should be

attained in terms of the numbers of educationally deprived children in the project area in both public and private schools and related to their specific needs, which in turn should produce an equitable sharing of Title I resources by both groups of children.

The application should provide sufficient evidence to assure the State educational agency that the local educational agency will maintain administrative direction and control over Title I activities conducted on private premises. Title I instructional activities and related services, the use of equipment, and all personnel performing services on private premises under the Title I program are to be under the active supervision of the applicant local educational agency.

5. IMPLEMENTATION OF TITLE I PROGRAMS

5.5 Title I activities or services will be offered at locations where the children can best be served.
Authority: 20 USC 241e(a)(1)

All Title I program activities must be designed for educationally deprived children who live in eligible attendance areas but should be offered at locations where those children can best be serviced. Any proposed Title I activities (including the construction of school facilities) which, because of location or for other reasons, would in effect prolong the racial, social, or linguistic isolation of the children to be served would be self-defeating and should not be approved. Applicants for Title I funds should design effective compensatory education programs which include, where appropriate, measures for fostering integration in the community.

In some cases, the locations where the children can best be served will be outside the project area. The application should indicate clearly the locations both inside and outside the project area where Title I services will be offered and the number of children from inside and outside the project areas who will participate at each such location. No child who lives in a project area and who would otherwise receive Title I services is to be denied such services because of his exercise of a right to enroll in another school. Children residing outside the

project areas who can benefit from the services may participate on a space-available basis.

6. EVALUATION

6.1 The Title I program includes specific evaluation procedures that are appropriate for the services to be provided and consistent with approved program objectives. Adequate staff and other resources will be provided to implement the procedures.
Authority: 20 USC 241e(a)(6)

(Ed. note - While explaining the elements that should be included in the evaluation procedures, this criterion points out the importance of involving private school officials in the formulation of an evaluation design which would include private school participants.)

The application should also contain sufficient information for the State educational agency to determine the adequacy of the resources the local educational agency expects to use in carrying out the evaluation of its major program activities. Private school officials should be involved in the formulation of evaluation procedures for any activity in which private school children are expected to participate.

Program Guide #45-A
July 31, 1969

Insuring the Proper Use of Title I, ESEA Funds in 1970 Programs

(Ed. note - This program guide contains specific guidance for SEA's in the approval of projects in accordance with Program Guide 44. The following has particular significance for private school children.)

The Title I Criteria (Program Guide #44) should be in the hands of every local agency. Your agency should insist on compliance with the criteria and should not hesitate to reject a project that fails to meet the criteria.

In reviewing Title I proposals the SEA should be particularly alert to the following indications of violations of basic Title I requirements:

1. The applicant proposes to provide Title I services to children who do not reside in areas determined to be eligible for Title I, ESEA, services.

2. The proposed activity or activities appear not be related to any special need or to any defined objective for the development of children with a particular need.

3. The proposal includes little or no information about the involvement of parents, community, and local agency representatives and private school officials in the planning of the local Title I program.

4. The proposal is either ambiguous or inadequate with respect to provisions for the participation of children in private schools.

Program Guide #46
July 2, 1968

Community and Parent Involvement in Title I, ESEA, Programs

(Ed. note - This guideline specifies the composition and functions of a local advisory group. It calls attention to the participation of private school representatives in the following paragraphs.)

Item 2.1 of the revised criteria for the approval of Title I, ESEA applications requires a finding that:

2.1 The priority needs of educationally deprived children in the eligible attendance area (target populations) were determined in consultation with teachers, parents, private school authorities and representatives of other agencies which have a genuine and continuing interest in such children. The evidence of need and the bases for the assignment of priorities have been documented.

Authority: 20 USC 241e(a)(1)

The criteria also require, as indicated in item 3.1 and the discussion following that item, that the same groups, agencies, parents and others be involved in a comprehensive analysis of the resources available to meet those needs and in the development of a comprehensive compensatory educational program for the coordinated use of Title I funds and of the resources from other programs and agencies.

To carry out effectively the intent of these criteria, each Title I applicant must have an appropriate organizational arrangement. This means, in effect, that local advisory committees will need to be established for the planning, operation, and appraisal of a comprehensive compensatory educational program.

I. Composition of the Local Advisory Committee

A. It is suggested that at least 50 percent of the membership of the committee consist of parents of disadvantaged children attending schools serving the area where projects will be conducted, representatives of the poor from the Community Action Agency and parent members of the Head Start advisory committee, if there is a Head Start project in the community, and representatives of other neighborhood-based organizations which have a particular interest in the compensatory educational program.

B. The committee should also include school staff members representing the regular and special programs to be offered in the project areas, representatives of private schools, and leaders of other agencies and organizations. Where model cities or neighborhood service center projects are being planned, representatives from those projects should also be included on the advisory committee for the comprehensive compensatory educational program.

Program Guide #46-A
July 19, 1968

Community and Parent Involvement in Title I, ESEA, Programs (Supplement to Program Guide #46)

Program Guide #46 was intended to call attention to the need for "appropriate organizational arrangements" for community and parent involvement. These arrangements should provide opportunities for consultation with a variety of groups and individuals including teachers, parents, private school authorities, representatives of local agencies, and community leaders. An adequate assessment of the needs of disadvantaged children and maximum utilization of existing community resources require this kind of involvement.

In most instances, it will be advantageous for a local educational agency to establish a local advisory committee along the lines suggested by Program Guide #46. As stated in that guide, these committees can provide new insights on ways in which compensatory education programs can be made more relevant to the needs of disadvantaged children. Local advisory committees will be particularly useful in those communities where LEA's are confronted with conflicting

interests, a wide variety of educational needs, and the coordination of Title I programs with other programs and agencies.

In some instances, however, local conditions may favor other arrangements because of such factors as small Title I allocations and sparse populations. In these situations the SEA may advise the LEA that the criteria requirements can be met by alternate methods, such as: (a) utilization of existing committees or groups with adequate community and parent representation; (b) modification of existing organizations to provide for such representation; or (c) arrangement of public meetings in which interested community and parent representatives may take part in project development.

Whatever arrangement is decided upon, it should be one which your office, in the light of its understanding of the local situation, finds likely to be effective in increasing community and parent participation in Title I programs for impoverished children.

Program Guide #48

Improving the Quality of Local Title I Compensatory Education Programs

(Ed. note - In suggesting a number of ways in which programs may be improved, this guideline calls attention to the importance of consultation with private school officials.)

In developing a concentrated program for the disadvantaged children in the selected attendance areas, the LEA should consult with appropriate officials of the private schools in order to determine what services will best serve the needs of those private school children who reside in the project area and how those services can best be provided. Such services, of course, must be based on the needs of individual children and not on the needs of the private school as an institution.

Program Guide #60
August 14, 1970

Clothing as a Title I Auxiliary Service

SEA's may approve applications for Title I programs which include a clothing component under the following circumstances:

1. The provision of clothing is a part of a comprehensive program designed to meet the special educational needs of educationally deprived children residing in eligible school attendance areas.

2. The clothing is provided to only those children who are participating in Title I educational activities.

3. Documentation is furnished that the provision of clothing is necessary for attendance at school.

4. Evidence is provided that all other resources for supportive services have been exhausted.

5. Provision is made for eligible children in public and nonpublic schools on a comparable basis.

6. Procedures are established whereby the effectiveness of the clothing component is evaluated.

7. The arrangements for the purchase of clothing are such to insure that the eligible children actually receive the clothing purchased with Title I funds.

Program Guide #64

The Administration of Title I of the Elementary and Secondary Education Act in Districts That Have Undergone Desegregation

Cancelled: Program Guide #28

The purpose of this memorandum is to cancel Program Guide #28 and to restate the existing Title I policies that will be applicable to local educational agencies whose school districts have recently been desegregated.

Selection of Areas or Schools

Wherever definite attendance areas or zones have been established, whether through a desegregation plan or otherwise, Title I services are to be offered only to children who live in those areas or zones which have at least average or higher than average concentrations of children from low-income families (see Title I Regulations, Section 116.17). Each local educational agency that has undergone desegregation must, therefore, in planning its Title I program for fiscal year 1972 determine which of its attendance areas are eligible for Title I projects. If there

are no well-defined attendance areas, the local educational agency should redetermine which of its schools are eligible for Title I projects on the basis that the incidence of children from low-income families in those schools is as high or higher than the average incidence for all schools in the district.

Unfortunately, in some instances children who have participated in Title I programs under previous determinations of eligibility, including children who have been served on the basis that Title I services "follow the child," will now be residing in ineligible attendance areas and, therefore, will be ineligible for Title I services.

As explained in the Title I criteria (Program Guide #44), for those school districts where there are no well-defined attendance areas, the determination of schools eligible for Title I projects is to be made on the basis of the number or percentage of children from low-income families actually attending each school operated by the local educational agency. Such a determination, however, does not preclude the participation of preschool or private school children, who will attend or could attend that school.

In districts with no wide variations in the concentrations of children from low-income families, a whole school district or a group of contiguous school attendance areas may be regarded as a single area of high concentration. Such determinations would, of course, be limited to those school districts where the variation between the areas of highest and lowest concentration is significantly less than the average variation for the State. In each such case the local educational agency must make a special effort to ensure that Title I services are concentrated sufficiently on a limited number of children to insure an effective program.

Extension of Title I Services to Children Attending Non-Title I Schools

Children who reside in eligible attendance areas but by specific arrangements attend schools serving ineligible areas may be considered for participation in the Title I program.

Effect of Title I Programs on Desegregation

Title I funds are not to be used for the purpose of meeting the specific requirements of a desegregation plan. Nevertheless, the Title I program should have a positive effect on the applicant's desegregation program and should not in any event contribute to the maintenance or renewal of segregation. It is extremely important, therefore, that children be chosen to receive Title I

assistance on the basis of a comprehensive and valid assessment of needs and not on the basis of race.

Your agency in monitoring Title I projects must ensure that they are not being conducted in ways that result in the racial isolation of the children being served.

Segregated Institutions for Neglected and Delinquent Children

Title I services are not to be offered on the premises of a segregated institution for neglected or delinquent children. Children from such institutions who have special educational needs may participate in Title I programs on public premises provided that such programs also serve children from outside those institutions and that the children are selected for those programs on a non-discriminatory basis.

Amendments to Title I Applications

All changes in attendance patterns or in any other conditions that affect the determinations that must be made under Title I should be reported immediately to the State educational agency. Appropriate changes of programs should be planned as quickly as possible and submitted to the State educational agency for approval.

Authority: 20 U.S.C. 241e(a)(1)

Advisory Statements

Advisory Statement on Development of Policy on Comparability

(Ed. note - In the final section of the statement, which deals with points of clarification and definitions, number five makes reference to private schools.)

5. Title I schools are the schools which serve attendance areas designated by the local educational agency as project areas to receive Title I services. Private schools whose children participate in Title I activities are not included.

Advisory Statement on Development of Policy on Parental Involvement in Title I ESEA Projects

(Ed. note - In setting down the criteria for parental involvement, the following reference is found in section A.)

An assurance that the local educational agency has established a system-wide council composed of parents of children to be served in public and nonpublic schools participating in Title I activities.

INDEX

Administrative Control - Reg. 116.19; Reg. 116.20(b); Reg. 116.55(a); Program Guide #24, Sec. 10; Program Guide #44, Sec. 4.5

Approvability of Application - Program Guide #44; Program Guide #45-A

Civil Rights Assurances - Program Guide #24, Sec. 3

Classroom Rental - Program Guide #24, Sec. 7

Clothing - Program Guide #60

Comparability - Advisory Statement on Development of Policy on Comparability

Comparable Services - Reg. 116.19; Program Guide #24, Sec. 10; Program Guide #44, Sec. 4.5

Construction - Reg. 116.17(i); Reg. 116.19(e); Program Guide #24, Sec. 2

Consultation - Reg. 116.19(b); Program Guide #44, Sec. 2.1; Program Guide #44, Sec. 4.5

Contracts - Program Guide #24, Sec. 10

Dual Enrollment - Reg. 116.19(a)

Eligibility - Reg. 116.19(a); Program Guide #44, Sec. 1.1; Program Guide #64

Equipment - Reg. 116.19(e); Reg. 116.20(b); Reg. 116.55(a); Program Guide #24, Sec. 5

Evaluation - Reg. 116.22(c); Program Guide #44, Sec. 6.1

Expenditure Ratio - Program Guide #24, Sec. 10

Genuine Opportunities - Reg. 116.19(a); Program Guide #44, Sec. 4.5

Inservice Training Expenses - Program Guide #24, Sec. 9

Inventories - Reg. 116.55(a)

Joint Project Application - Reg. 116.19(a)

Location of Activity - Reg. 116.19; Program Guide #24, Sec. 10; Program Guide #44, Sec. 5.5

Mobile Service - Reg. 116.19(a)

Needs Assessment - Reg. 116.19(b); Program Guide #44, Sec. 2.1; Program Guide #44, Sec. 4.5

Planning, Involvement of Parents, Teachers, Private School Representatives in - Reg. 116.17(o)(2)(i); 116.19(b); Program Guide #44, Sec. 2.1; Program Guide #44, Sec. 3.1; Program Guide #45-A; Program Guide #46; Program Guide #46-A; Program Guide #48; Advisory Statement on Development of Policy on Parental Involvement in Title I, ESEA, Projects

Salaries of Private School Teachers - Reg. 116.19(e); Program Guide #24, Sec. 9

Scope and Quality - Reg. 116.19; Program Guide #44, Sec. 4.5

Stipends - Program Guide #24, Sec. 9

Target Population - Program Guide #44, Sec. 1.1; Program Guide #64

Teacher Aides - Program Guide #24, Sec. 10

Time of Activity - Program Guide #24, Sec. 10

Travel Expenditures - Program Guide #24, Sec. 9

Work-Study Assignments - Program Guide #24, Sec. 1